

ESTTA Tracking number: **ESTTA570330**

Filing date: **11/12/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Darlene Freeland
Granted to Date of previous extension	11/13/2013
Address	107 East Charleston Blvd. Las Vegas, NV 89104 UNITED STATES
Party who filed Extension of time to oppose	DarleneFreeland
Relationship to party who filed Extension of time to oppose	space entered between first and last names

Attorney information	Scott W. Kelley KELLY & KELLEY, LLP 6320 Canoga Ave, Suite 1650 Woodland Hills, CA 91367 UNITED STATES scott@kelly-kelleylaw.com Phone:818-347-7900
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Applicant Information

Application No	85644564	Publication date	07/16/2013
Opposition Filing Date	11/12/2013	Opposition Period Ends	11/13/2013
Applicant	Sony Music Entertainment Rm 2325 New York, NY 10022 GERMANY		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Musical sound recordings; audiovisual recordings featuring music and musical based entertainment; downloadable musical sound and downloadable audiovisual recordings featuring music and musical based entertainment; downloadable ring tones, graphics and music via a global computernetwork and wireless devices
Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Printed materials, namely, posters and magazines featuring information on music, concerts, tours of music groups; stickers and transfers; bumper stickers; paper goods, namely, calendars, diaries, temporary paper tattoos, paper party supplies, namely, paper napkins, paper tablecloths, merchandise, namely, three-ring binders, photo

albums, blank writing journals

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3540177	Application Date	04/22/2008
Registration Date	12/02/2008	Foreign Priority Date	NONE
Word Mark	FACE UP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1994/04/01 First Use In Commerce: 1994/04/01 Paintings; books in the fields of fine art, autobiography, cartoons, and inspiration; prints, cartoon strips, animationcells, printing fonts, greeting cards, and motivational cards Class 035. First use: First Use: 1994/04/01 First Use In Commerce: 1994/04/01 Online retail store services featuring art prints, books, bookmarks, fine art on canvas, and card decks Class 041. First use: First Use: 1994/04/01 First Use In Commerce: 1994/04/01 On-line journals, namely, blogs featuring cartoons; Film production		

Attachments	77455155#TMSN.jpeg(bytes) 55300_OppositionNotice.pdf(75687 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Scott W. Kelley/
Name	Scott W. Kelley
Date	11/12/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of:

DARLENE FREELAND,

Opposer,

v.

SONY MUSIC ENTERTAINMENT,

Applicant.

Opposition No. _____

Application Serial No. 85/644,564

For the mark: FACE UP

Date Published: July 16, 2013

Trademark Trial and Appeal Board
Commissioner for Trademarks
Via E-File

NOTICE OF OPPOSITION

DARLENE FREELAND, having an address of 107 East Charleston Blvd., Las Vegas, Nevada 89104 (hereinafter "Opposer"), believes that she will be damaged by the registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is the owner of U.S. Trademark Registration No. 3,540,177, registered December 2, 2008, for the mark FACE UP for use with the following:

Paintings; books in the fields of fine art, autobiography, cartoons, and inspiration; prints, cartoon strips, animation cells, printing fonts, greeting cards, and motivational cards, in International Class 16;

Online retail store services featuring art prints, books, bookmarks, fine art on canvas, and card decks, in International Class 35; and

On-line journals, namely, blogs featuring cartoons; Film production, in International Class 41.

2. The FACE UP mark was first used in commerce at least as early as April 1, 1994, and first used anywhere at least as early as April 1, 1994. Attached to this Notice of Opposition is a photocopy of this U.S. Trademark Registration No. 3,540,177 prepared and issued by the United States Patent and Trademark Office showing both the current status of and current title to the registration.

3. As Opposer has developed extensive goodwill with respect to its FACE UP trademark, and has expended substantial sums in the advertising and promotion of its products, and by its efforts and its considerable expenditures for promotional activities, Opposer has developed an extensive and valuable reputation for its FACE UP trademark.

4. On or about July 16, 2013, Sony Music Entertainment (hereinafter "Applicant") filed an intent-to-use trademark application to register the mark FACE UP for the following:

Musical sound recordings; audiovisual recordings featuring music and musical based entertainment; downloadable musical sound and downloadable audiovisual recordings featuring music and musical based entertainment; downloadable ring tones, graphics and music via a global computer network and wireless devices, in International Class 9;

Printed materials, namely, posters and magazines featuring information on music, concerts, tours of music groups; stickers and transfers; bumper stickers; paper goods, namely, calendars, diaries, temporary paper tattoos, paper party supplies, namely, paper napkins, paper tablecloths, merchandise, namely, three-ring binders, photo albums, blank writing journals, in International Class 16; and

Entertainment, namely, organizing and producing musical events;
Entertainment, namely, live music concerts; providing online entertainment, namely, providing sound and audiovisual recordings in the field of music and musical based entertainment; providing a website over a global computer network featuring information on musical artists, tours of musical artists, sound recordings, popular culture and events and musical based entertainment, in International Class 41.

5. The application was assigned Serial No. 85/644,564. Said trademark application was published in the Official Gazette of the U.S. Patent and Trademark Office on July 16, 2013.

6. Opposer believes that Applicant is attempting to benefit from the goodwill already established by Opposer in her mark, by using a mark for its goods which so closely resembles Opposer's marks so as to cause a likelihood of confusion and to confuse the purchasing public to believing that it is purchasing goods provided and/or sponsored by Opposer. Opposer is therefore informed and believes that Applicant's proposed mark is likely to confuse Opposer's customers, potential customers and the public generally in relation to her above-mentioned FACE UP trademark.

7. By virtue of her efforts, and the expenditure of considerable sums for promotional activities, as well as the excellence of the quality of her products, Opposer

has gained a valuable reputation through its above-identified FACE UP trademark. Opposer's FACE UP trademark is famous within the meaning of 14 USC Section 1125(c).

8. Opposer is informed and believes that Applicant's use or intended use of the mark FACE UP began after Opposer's FACE UP trademark became famous and will dilute the strength of Opposer's mark by lessening the capacity of Opposer's mark to identify and distinguish Opposer's goods and services.

9. Opposer has not and does not consent in any way to Applicant's proposed use or registration of the alleged trademark.

WHEREFORE, Opposer respectfully requests that the registration of Applicant's mark under the above-identified application be refused and that this Opposition be sustained.

Dated: November 12, 2013

Respectfully Submitted,

KELLY & KELLEY, LLP

/Scott W. Kelley/

SCOTT W. KELLEY

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Woodland Hills, California 91367
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the attached Notice of Opposition to be served on this date via United States first-class mail, postage prepaid, upon Applicant, as follows:

Sony Music Entertainment
550 Madison Ave, Rm 2325,
New York, NY 10022

Dated: November 12, 2013

/Nancy Hoover/

NANCY HOOVER

Int. Cls.: 16, 35 and 41

**Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 50, 100, 101, 102
and 107**

Reg. No. 3,540,177

United States Patent and Trademark Office

Registered Dec. 2, 2008

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

Face Up

FREELAND, DARLENE (UNITED STATES INDIVIDUAL)
STUDIO #203
107 EAST CHARLESTON BLVD.
LAS VEGAS, NV 89104

FOR: PAINTINGS; BOOKS IN THE FIELDS OF FINE ART, AUTOBIOGRAPHY, CARTOONS, AND INSPIRATION; PRINTS, CARTOON STRIPS, ANIMATION CELS, PRINTING FONTS, GREETING CARDS, AND MOTIVATIONAL CARDS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 4-1-1994; IN COMMERCE 4-1-1994.

FOR: ONLINE RETAIL STORE SERVICES FEATURING ART PRINTS, BOOKS, BOOKMARKS, FINE ART ON CANVAS, AND CARD DECKS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-1-1994; IN COMMERCE 4-1-1994.

FOR: ON-LINE JOURNALS, NAMELY, BLOGS FEATURING CARTOONS; FILM PRODUCTION, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-1-1994; IN COMMERCE 4-1-1994.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-455,155, FILED 4-22-2008.

JUDITH HELFMAN, EXAMINING ATTORNEY